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Memorandum

To: Attorney General John Suthers

From: Dan Domenico, Solicitor General 

cc: Jason Dunn, Deputy Attorney General
Dennis Ellis, Deputy Attorney General

Re: Constitutionality of Repeal of Statutory Limitation on School District Tax Revenues.

You asked for an analysis of whether the General Assembly may repeal the limitation on school district mill levy revenues required by the School Finance Act without violating article X, section 20, of the Colorado Constitution, the Taxpayer Bill of Rights ("TABOR").

Having reviewed the relevant constitutional and statutory provisions, relevant caselaw, and analyses provided by the Chief Counsel to the Governor¹ and the Office of Legislative Legal Services ("OLLS"),² I conclude that the best reading of the Colorado Constitution requires that a revision of this sort, which will have the direct effect of raising the property tax burden of many taxpayers in the state, be submitted to the voters for approval.

Background

The state Constitution reads, in relevant part:

- (1) General provisions. . . . Its preferred interpretation shall reasonably restrain most the growth of government. All provisions are self-executing and severable and supersede conflicting state constitutional, state statutory, charter, or other state or local

¹ See Letter from Thomas M. Rogers III, Chief Counsel to the Governor to The Honorable Sue Windels, dated March 20, 2007 (hereinafter "Counsel's Letter").

² See Legal Memorandum from Office of Legislative Legal Services to Senator Sue Windels, dated March 28, 2007 (hereinafter "2007 Memo"); and Memorandum from Office of Legislative Legal Services to Representative Keith King, dated April 7, 2004 (hereinafter "2004 Memo").

provisions. Other limits on district revenue, spending, and debt may be weakened only by future voter approval. . .

...

(2) Term definitions. Within this section: . . .

(b) "District" means the state or any local government, excluding enterprises.

...

(4) Required elections. Starting November 4, 1992, districts must have voter approval in advance for:

(a) Unless (1) or (6) applies, any new tax, tax rate increase, mill levy above that for the prior year, valuation for assessment ratio increase for a property class, or extension of an expiring tax, or a tax policy change directly causing a net tax revenue gain to any district.³

The current version of the School Finance Act reads, in relevant part:

(2)(a) . . . [E]ach district shall levy the lesser of:

(I) The number of mills levied by the district for the immediately preceding property tax year;

(II) The number of mills that will generate property tax revenue in an amount equal to the district's total program for the applicable budget year minus the district's minimum state aid and minus the amount of specific ownership tax revenue paid to the district;

(III) The number of mills that may be levied by the district under the property tax revenue limitation imposed on the district by section 20 of article X of the state constitution. . .⁴

Under the current system, therefore, a school district must reduce the number of mills it levies (that is, the tax rate it applies) if property values have increased to such a degree that applying the same number of mills would exceed the revenue limits in section 20(7) of TABOR. That is, as property values increase, the tax rate decreases so that a taxpayer's tax burden does not increase. While most of the state's school districts have voted under TABOR to opt out of its constitutional revenue limits, this statutory provision limits the tax burden on individuals throughout the state, and therefore the revenue even those districts that have opted out may receive from mill levies.

³ Colo. Const., art. X, sec. 20.

⁴ Sec. 22-54-106(2)(a), C.R.S. (2006).